

Executive Summary – Enforcement Matter – Case No. 58999
VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8
RN102273711
Docket No. 2020-0326-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Right Choice Food Mart 8, 715 U.S. Highway 90 East, Waelder, Gonzales County

Type of Operation:

Underground storage tank ("UST") system and a convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: June 12, 2020

Comments Received: No

Penalty Information

Total Penalty Assessed: \$7,813

Amount Deferred for Expedited Settlement: \$1,562

Total Paid to General Revenue: \$196

Total Due to General Revenue: \$6,055

Payment Plan: 35 payments of \$173 each

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 28, 2020

Date(s) of NOE(s): February 7, 2020

Executive Summary – Enforcement Matter – Case No. 58999
VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8
RN102273711
Docket No. 2020-0326-PST-E

Violation Information

1. Failed to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
2. Failed to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].
3. Failed to use equipment capable of measuring the level of stored substance over the full range of the tank's height to the nearest 1/8 inch. Specifically, one gauging stick was broken-off inside of the super unleaded drop tube, and the other gauging stick numbers were not legible and did not have the rubber grommet at the end to accurately measure the contents to the nearest 1/8 inch [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(II) and TEX. WATER CODE § 26.3475(c)(1)].
4. Failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the Respondent had not conducted the triennial testing of the corrosion protection system [30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d)].
5. Failed to designate, train, and certify at least one named individual for each class of operator – Class A, Class B, and Class C – for the Facility. Specifically, the Respondent had not designated, trained, and certified a Class C operator for the Facility [30 TEX. ADMIN. CODE § 334.602(a)].
6. Failed to assure that all UST recordkeeping requirements are met. Specifically, spill and overfill prevention records were not available for review at the time of the investigation [30 TEX. ADMIN. CODE § 334.10(b)(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent obtained a proper gauging stick for the USTs at the Facility on January 30, 2020.

Technical Requirements:

The Order will require the Respondent to:

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VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8
RN102273711
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- a. Immediately, begin maintaining all UST records, including but not limited to spill and overfill prevention records, and ensure that they are immediately made available for inspection upon request by agency personnel;
- b. Within 30 days:
 - i. Implement a release detection method for the USTs including reconciliation of detailed inventory control records;
 - ii. Conduct the required triennial testing of the corrosion protection system; and
 - iii. Designate, train, and certify one named individual as a Class C operator.
- c. Within 45 days, submit written certification to demonstrate compliance with a. and b.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Hailey Johnson, Enforcement Division, Enforcement Team 6, MC 219, (512) 239-1756; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Nayab S. Vapiwalla, Director, VAPIWALLA & SON'S INC., 1315 Seydler Street, Gonzales, Texas 78629-2730

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES Assigned 18-Feb-2020
PCW 24-Feb-2020 Screening 20-Feb-2020 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8
Reg. Ent. Ref. No. RN102273711
Facility/Site Region 14-Corpus Christi Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 58999 No. of Violations 4
Docket No. 2020-0326-PST-E Order Type 1660
Media Program(s) Petroleum Storage Tank Government/Non-Profit No
Multi-Media Inf. Coordinator Hailey Johnson
EC's Team Enforcement Team 6
Admin. Penalty \$ Limit Minimum \$0 Maximum \$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$8,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History -10.0% Adjustment Subtotals 2, 3, & 7 -\$850

Notes Reduction for High Performer Classification.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$0

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$253
Estimated Cost of Compliance \$2,252

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$7,650

OTHER FACTORS AS JUSTICE MAY REQUIRE 2.1% Adjustment \$163

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Enhancement to capture the avoided cost of compliance associated with Violation No. 2.

Final Penalty Amount \$7,813

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$7,813

DEFERRAL 20.0% Reduction Adjustment -\$1,562

Reduces the Final Assessed Penalty by the indicated percentage.

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY \$6,251

Screening Date 20-Feb-2020

Docket No. 2020-0326-PST-E

PCW

Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8

Policy Revision 4 (April 2014)

Case ID No. 58999

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102273711

Media Petroleum Storage Tank

Enf. Coordinator Hailey Johnson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance
History
Notes

Reduction for High Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 20-Feb-2020

Docket No. 2020-0326-PST-E

PCW

Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8

Policy Revision 4 (April 2014)

Case ID No. 58999

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102273711

Media Petroleum Storage Tank

Enf. Coordinator Hailey Johnson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (d)(1)(B)(ii), and (d)(1)(B)(iii)(II) and
Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to monitor the underground storage tanks ("USTs") in a manner which will detect a release at a frequency of at least once every 30 days. Also, failed to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons. Additionally, failed to use equipment capable of measuring the level of stored substance over the full range of the tank's height to the nearest 1/8 inch. Specifically, one gauging stick was broken-off inside of the super unleaded drop tube, and the other gauging stick numbers were not legible and did not have the rubber grommet at the end to accurately measure the contents to the nearest 1/8 inch.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

23 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the January 28, 2020 investigation date to the February 20, 2020 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$66

Violation Final Penalty Total \$3,447

This violation Final Assessed Penalty (adjusted for limits) \$3,447

Economic Benefit Worksheet

Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8

Case ID No. 58999

Reg. Ent. Reference No. RN102273711

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment	\$38	28-Jan-2020	30-Jan-2020	0.01	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	28-Jan-2020	14-Dec-2020	0.88	\$66	n/a	\$66

Notes for DELAYED costs

Actual delayed cost (\$38) to obtain a proper gauging stick capable of measuring the level of stored substance over the full range of the tank's height to the nearest 1/8 inch for the USTs at the Facility. The Date required is the investigation date and the Final Date is the date of compliance. Estimated delayed cost (\$1,500) to implement a release detection method, including reconciliation of detailed inventory control records for the USTs at the Facility. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,538

TOTAL

\$66

Screening Date 20-Feb-2020 **Docket No.** 2020-0326-PST-E **PCW**
Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8 *Policy Revision 4 (April 2014)*
Case ID No. 58999 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN102273711
Media Petroleum Storage Tank
Enf. Coordinator Hailey Johnson
Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(4)(C) and Tex. Water Code § 26.3475(d)

Violation Description
 Failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the Respondent had not conducted the triennial testing of the corrosion protection system.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				15.0%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes
 Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 348 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes
 The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$185

Violation Final Penalty Total \$3,447

This violation Final Assessed Penalty (adjusted for limits) \$3,447

Economic Benefit Worksheet

Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8
Case ID No. 58999
Reg. Ent. Reference No. RN102273711
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$500	28-Jan-2020	14-Dec-2020	0.88	\$22	n/a	\$22
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to conduct the triennial testing of the corrosion protection system. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$167	9-Mar-2019	20-Feb-2020	0.95	\$4	\$159	\$163
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the triennial testing of the corrosion protection system (\$500, annualized). The Date Required is the operator change date and the Final Date is the screening date.

Approx. Cost of Compliance

\$659

TOTAL

\$185

Screening Date 20-Feb-2020
Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8
Case ID No. 58999
Reg. Ent. Reference No. RN102273711

Docket No. 2020-0326-PST-E

PCW

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Media Petroleum Storage Tank

Enf. Coordinator Hailey Johnson

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.602(a)

Violation Description

Failed to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C - for the Facility. Specifically, the Respondent had not designated, trained, and certified a Class C operator for the Facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 3.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$24,250

\$750

Violation Events

Number of Violation Events 1

23 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$750

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$689

This violation Final Assessed Penalty (adjusted for limits) \$689

Economic Benefit Worksheet

Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8

Case ID No. 58999

Reg. Ent. Reference No. RN102273711

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$10	28-Jan-2020	14-Dec-2020	0.88	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to designate, train, and certify one named individual as a Class C operator for the Facility. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10

TOTAL

\$0

Screening Date 20-Feb-2020 **Docket No.** 2020-0326-PST-E **PCW**
Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8 *Policy Revision 4 (April 2014)*
Case ID No. 58999 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN102273711
Media Petroleum Storage Tank
Enf. Coordinator Hailey Johnson
Violation Number 4
Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)(2)

Violation Description

Failed to assure that all UST recordkeeping requirements are met. Specifically, spill and overfill prevention records were not available for review at the time of the investigation.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Release	Major	Minor	
	Actual			0.0%
	Potential			

>> Programmatic Matrix

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 1 23 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$230

This violation Final Assessed Penalty (adjusted for limits) \$230

Economic Benefit Worksheet

Respondent VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8

Case ID No. 58999

Reg. Ent. Reference No. RN102273711

Media Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$45	28-Jan-2020	14-Dec-2020	0.88	\$2	n/a	\$2
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to maintain records, including spill and overfill prevention records. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$45

TOTAL

\$2

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN605686856, RN102273711, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator: CN605686856, VAPIWALLA & SON'S INC. **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN102273711, Right Choice Food Mart 8 **Classification:** HIGH **Rating:** 0.00

Complexity Points: 2 **Repeat Violator:** NO

CH Group: 01 - Gas Stations with convenience Stores and other Gas Stations

Location: 715 United States Highway 90 East, Waelder, Gonzales County, Texas 78959

TCEQ Region: REGION 14 - CORPUS CHRISTI

ID Number(s):
PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 69067

Compliance History Period: September 01, 2014 to August 31, 2019 **Rating Year:** 2019 **Rating Date:** 09/01/2019

Date Compliance History Report Prepared: February 20, 2020

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 20, 2015 to February 20, 2020

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Hailey Johnson **Phone:** (512) 239-1756

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five-year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- 3) Who is the current owner/operator? OPM Texas Investments, LLC OWNER since 6/1/2008
OPERATOR since 3/9/2019 VAPIWALLA & SON'S INC. OPERATOR since 3/9/2019
- 4) Who was/were the prior owner(s)/operator(s)? Hybiscus Food, Inc., OPERATOR, 6/1/2008 to 3/8/2019

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1 February 09, 2016 (1308108)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):
N/A

H. Voluntary on-site compliance assessment dates:
N/A

I. Participation in a voluntary pollution reduction program:
N/A

J. Early compliance:
N/A

Sites Outside of Texas:
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
VAPIWALLA & SON'S INC. DBA
RIGHT CHOICE FOOD MART 8
RN102273711**

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§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2020-0326-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8 (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent operates, as defined in 30 TEX. ADMIN. CODE § 334.2(75), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 715 United States Highway 90 East in Waelder, Gonzales County, Texas (the "Facility"). The UST system at the Facility is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$7,813 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$196 of the penalty and \$1,562 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order.

The remaining amount of \$6,055 of the undeferred penalty shall be paid in 35 monthly payments of \$173 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than

- 30 days following the due date of the previous payment until the penalty is paid in full. If the Respondent fails to comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. The Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms and conditions of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.
5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
 6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
 7. This Order represents the complete and fully integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
 8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
 9. The Executive Director recognizes that the Respondent obtained a proper gauging stick for the USTs at the Facility on January 30, 2020.

II. ALLEGATIONS

During an investigation conducted on January 28, 2020, an investigator documented that the Respondent:

1. Failed to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
2. Failed to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1).
3. Failed to use equipment capable of measuring the level of stored substance over the full range of the tank's height to the nearest 1/8 inch, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(II) and TEX. WATER CODE § 26.3475(c)(1). Specifically, one gauging stick was broken-off inside of the super unleaded drop tube, and the other

gauging stick numbers were not legible and did not have the rubber grommet at the end to accurately measure the contents to the nearest 1/8 inch.

4. Failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d). Specifically, the Respondent had not conducted the triennial testing of the corrosion protection system.
5. Failed to designate, train, and certify at least one named individual for each class of operator – Class A, Class B, and Class C – for the Facility, in violation of 30 TEX. ADMIN. CODE § 334.602(a). Specifically, the Respondent had not designated, trained, and certified a Class C operator for the Facility.
6. Failed to assure that all UST recordkeeping requirements are met, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(2). Specifically, spill and overfill prevention records were not available for review at the time of the investigation.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8, Docket No. 2020-0326-PST-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, begin maintaining all UST records, including but not limited to spill and overfill prevention records, and ensure that they are immediately made available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10;
 - b. Within 30 days after the effective date of this Order:
 - i. Implement a release detection method for the USTs at the Facility,

including reconciliation of detailed inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50;

- ii. Conduct the required triennial testing of the corrosion protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 - iii. Designate, train, and certify one named individual as a Class C operator for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.602.
- c. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a and 2.b. The certification shall be signed by the Respondent and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5839

- 3. All relief not expressly granted in this Order is denied.
- 4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
- 5. If the Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of

this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Pamela J. ...
For the Executive Director

7/24/2020
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

X *Nayab S. Vapiwalla*
Signature

4/25/20
Date

NAYAB S. VAPIWALLA
Name (Printed or typed)

DIRECTOR
Title

Authorized Representative of
VAPIWALLA & SON'S INC. dba Right Choice Food Mart 8

☐ If mailing address has changed, please check this box and provide the new address below: